

*Sala Naambwe and Yvette Nimanya v.
Smithfield Foods, Inc.*

Monica Derby

May 31, 2018



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<p>1 makes an objection to one of my questions, unless she 2 instructs you specifically "don't answer that," you 3 just proceed with your answer. Okay? Because the 4 objections are for the judge later.</p> <p>5 A Okay. Yes.</p> <p>6 Q And then the final thing is, I like to know what it 7 means to you when somebody says that your testimony is 8 under oath.</p> <p>9 A That it's -- so if it's under oath, it's just saying 10 that I'm giving a truthful statement. It will come 11 back and be reviewed.</p> <p>12 Q For background information about yourself, can you tell 13 me your age?</p> <p>14 A Yep. I'm 40 years old.</p> <p>15 Q And your educational background?</p> <p>16 A I got my bachelor's -- or I got an associate's degree 17 at Minnesota West in Pipestone, Minnesota. Went to 18 SDSU. Got my bachelor's degree in 2008. Then I went 19 to USD and got my master's degree there. I did start a 20 PhD program at SDSU, then I started working, so it just 21 got to be too much, so I'm on hold with that.</p> <p>22 Q What's your master's in?</p> <p>23 A I got a master's in administrative studies with a 24 concentration in HR and leadership.</p> <p>25 Q And, likewise, your PhD subject?</p>	<p>1 supposed to be instructed that you don't ever know that 2 people are sensitive about their personal life things, 3 you don't know people's backgrounds, and that you 4 should treat everyone like they might have something 5 that they're sensitive about in their background.</p> <p>6 Is that -- am I accurate about what the standard 7 for human relations professionals is as far as training 8 managers and employees?</p> <p>9 MS. CALEM: I'm going to object to the form. If 10 you understand the question, you can answer it.</p> <p>11 THE WITNESS: Maybe if you want to repeat it a 12 little bit or kind of --</p> <p>13 BY MS. POCHOP:</p> <p>14 Q Sure. What does your education tell you about what you 15 should teach managers when they are addressing 16 employees at work in terms of professional treatment?</p> <p>17 A One would be respectful communications.</p> <p>18 Q What does that mean in an educational sense?</p> <p>19 A You know, not using derogatory comments. You know, 20 speaking to them in private. Don't, you know, discuss 21 their personal nature. You know, really focus on the 22 work side of things.</p> <p>23 Q Are you supposed to assume that people might have 24 things in their background that you just don't know 25 that make them sensitive about things like race?</p>
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<p>1 A Going into sociology for that one.</p> <p>2 Q Your employment history, if you could just give me 3 background about where you've worked.</p> <p>4 A Yes. I worked at Royal River Casino prior to this in 5 their HR division as HR director, and then I was with 6 Good Samaritan Society in Pipestone, long-term care 7 facility, and I worked there as an HR director as well. 8 Prior to that, I worked at Ellison Meat Company. 9 It's a small meatpacking plant, and I worked there for, 10 I think it was two years, so -- I was going to school.</p> <p>11 Q Sounds like you have really significant training about 12 enforcement of human relations policies?</p> <p>13 A Yes.</p> <p>14 Q In general terms about human relations policies, is 15 there some standard about how you instruct managers 16 that they should deal with the employees? And I'm 17 going to give you this backdrop -- this is a long 18 question.</p> <p>19 A Okay.</p> <p>20 Q The backdrop is, is the person who was just offering 21 her testimony expressed pretty significant frustration 22 with the fact that she has sensitivity about her weight 23 and that when people say things about her weight, it's 24 clearly bothering her a lot. And my understanding 25 about HR training is that managers and employees are</p>	<p>1 A Should we assume?</p> <p>2 Q Yeah.</p> <p>3 A You know, I don't think we should assume anyone's 4 background.</p> <p>5 Q Are you supposed to approach people like they might be 6 sensitive about sexual comments at work?</p> <p>7 A Yes, you should approach everyone on the sensitive 8 side. I mean, just, you know, saying the right things, 9 doing the right things.</p> <p>10 Q Because I know doing the right thing is one of the 11 terms that's used in the code of conduct, and so I was 12 wondering what "doing the right thing" at Smithfield 13 Foods means when it comes to dealing with employees in 14 terms of sexual comments.</p> <p>15 A So if we are aware of those, it would be reviewing that 16 concern, doing an investigation when those are brought 17 forward.</p> <p>18 Q How many employees do you have out at Smithfield Foods?</p> <p>19 A We have about 3,400.</p> <p>20 Q And how many managers do you have at Smithfield Foods?</p> <p>21 A Specific managers? Like, which type of managers?</p> <p>22 Q Like how many -- of your employee base, how many 23 managers are supervising 3,400 employees?</p> <p>24 A So on the front line floor, that would be -- about 64 25 would be our production supervisors.</p>

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<p>1 Q How many in total?</p> <p>2 A We have 234 salaried staff varied at different levels.</p> <p>3 Q How many departments are there?</p> <p>4 A I believe we have 10 divisions.</p> <p>5 Q And in terms of your job duties at Smithfield Foods, can you describe what that is?</p> <p>7 A Yes. I work with the salaried recruitment. I work with the affirmative action plan. I back up Carrie and Scott if there's things that come forward with employees. I provide assistance leadership to the other HR coordinators there, you know, data entry, assist where needed.</p> <p>13 Q Can you walk me through what positions you have held and job titles you've had at Smithfield Foods?</p> <p>15 A HR manager.</p> <p>16 Q And how many HR managers are there?</p> <p>17 A There would be two. There would be myself and Carrie Moate.</p> <p>19 Q For the entire plant?</p> <p>20 A Yes.</p> <p>21 Q Where is the HR department located in the Smithfield plant?</p> <p>23 A It is located right on-site there.</p> <p>24 Q Is it kind of central to the departments or --</p> <p>25 A It's more towards -- it's not central to how the</p>	<p>1 Q As the affirmative action officer, you're the person who would probably know what percentage of your employees qualify as -- for affirmative action status; is that right?</p> <p>5 A Yes.</p> <p>6 Q So how many of your hourly employees qualify as diverse employees?</p> <p>8 MS. CALEM: Object to the form. Go ahead.</p> <p>9 THE WITNESS: About 82 percent of our employees.</p> <p>10 BY MS. POCHOP:</p> <p>11 Q And how about your managers?</p> <p>12 A We're sitting at 30 percent.</p> <p>13 Q Is that something that you're working on?</p> <p>14 A Yes.</p> <p>15 Q Why is that important?</p> <p>16 A Because diversity is very important, and bringing a diverse workforce at all levels, and it's meeting our goals and objectives of the affirmative action plan.</p> <p>19 Q What is the company's goal in terms of diverse management?</p> <p>21 A Our goal is to add more diversity amongst our management team.</p> <p>23 Q Are you trying to roughly reflect the diversity in your workforce or --</p> <p>25 A Yes, and our community.</p>
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<p>1 building lays out. But, yes, it's central in regards between our DC building and our plant building, so it would be right across the street. It's not a road, excuse me. A walkway.</p> <p>5 Q So your job duty is primarily in terms of recruitment?</p> <p>6 A I work a lot with our recruitment, but also making sure, you know, we're following EEO and everything like that for our recruitment activities, backing up, you know, our team members.</p> <p>10 Q Who is the affirmative action officer at the plant that's designated?</p> <p>12 A So I would be the designated officer there.</p> <p>13 Q You are the affirmative action officer?</p> <p>14 A Yes.</p> <p>15 Q How long have you held that position?</p> <p>16 A Since I started there.</p> <p>17 Q And what are your job duties as the affirmative action officer?</p> <p>19 A My job duties would make sure we are, you know, advertising correctly, definitely with our recruitment, our promotions, our trainings and that, you know, things are not discriminatory.</p> <p>23 Q I see that Smithfield is committed to a diverse workplace?</p> <p>25 A Yes.</p>	<p>1 Q So in terms of 82 percent of your population qualifies under the standard of diverse employees, what is the -- I mean, are a lot of those folks English second language?</p> <p>5 A I'm going to say yes. Yes.</p> <p>6 Q Is that something that you assess in terms of providing training and handbooks and materials for your employees?</p> <p>9 A No.</p> <p>10 Q How do you assure that your employees are understanding what the Smithfield policies and procedures are?</p> <p>12 A Upon hire, at that time, you know, being able to complete the application and any preemployment forms at that time, one of our policies is they need to be able to understand English.</p> <p>16 Q Is there a requirement that you speak English at Smithfield Foods?</p> <p>18 A Yes, in order to -- I mean, speak and understand and read.</p> <p>20 Q Are they required to speak English while they're at work?</p> <p>22 A Are they required?</p> <p>23 Q Yeah.</p> <p>24 A No.</p> <p>25 Q Would it be a violation of Smithfield policy for</p>

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<p style="text-align: right;">Page 13</p> <p>1 somebody to say, you have to speak English when you're 2 here? 3 MS. CALEM: Objection to the form. 4 BY MS. POCHOP: 5 Q Is there a policy that says that people have to speak 6 English while they're on Smithfield job duties? 7 A No. 8 Q Would that be a violation of Smithfield's diversity 9 policy if that were required? 10 MS. CALEM: Objection. Form. 11 BY MS. POCHOP: 12 Q You can answer. 13 A Can you repeat that, please. 14 Q Would it be a violation of Smithfield's diversity 15 policy if an employee was required to speak English 16 while at work? 17 MS. CALEM: Same objection. 18 THE WITNESS: No, we say that they can speak their 19 language. We don't say they can't speak their 20 language. 21 BY MS. POCHOP: 22 Q What is your responsibility to enforce Smithfield 23 policies and procedures? 24 A Once it's brought to my attention, to make sure a 25 policy or procedure has been followed.</p>	<p style="text-align: right;">Page 15</p> <p>1 you know, if somebody comes forward, what things we 2 should do and who those should go to. 3 Q What is the documentation policy at Smithfield Foods 4 when somebody makes a complaint of harassment? 5 A To investigate that. Once they bring it forward, you 6 know, you may need to involve HR or one of your ops 7 managers, somebody from above, get their statement, and 8 then, if need be, you would talk to the offending 9 party. If you need to go further, then you would talk 10 to witnesses that would have been provided from either 11 of those parties. 12 Q Under your documentation policy at HR, are you supposed 13 to get a written statement from people who report 14 policy violations? 15 A Sometimes it helps us as we start our investigation, 16 yes, I will ask them to, you know, fill something out 17 so that way we have that. 18 Q When you receive a complaint of harassment, what is 19 your responsibility as an HR manager? 20 A To review it promptly. 21 Q And what does that consist of? 22 A We would want to get that individual's statement, and 23 then we'd follow up with the one that they're making a 24 statement against. Generally, at the same time, we'd 25 also get ahold of their ops managers or superintendents</p>
<p style="text-align: right;">Page 14</p> <p>1 Q What is your responsibility to make sure that employees 2 understand the Speak Up policy? 3 A We provide an annual training, Train the Trainer, which 4 is then provided to our employees on speaking up or 5 harassment, and so they know what those ones are. 6 Q What do you train employees to understand about Speak 7 Up? 8 A If they're not getting treated right, if things aren't 9 fair, to speak up, you know, say something, let 10 somebody know, talk to your supervisor, talk to 11 somebody that you're comfortable with, so that way your 12 concern is brought forward. 13 Q Do you tell employees that there's an open door 14 policy -- 15 A Yes. 16 Q -- for complaints? 17 A Yes. 18 Q What is the training provided to your management level 19 about reporting suspected violations of company policy? 20 A So they receive the Train the Trainer on what steps 21 need to be taken to report those, to investigate, to 22 share those with HR if need be. We've done, this year, 23 some more training on the harassment reporting plans. 24 So those are some of the ones. We've done a 25 documentation training, so that way we can make sure,</p>	<p style="text-align: right;">Page 16</p> <p>1 to take part in that. Review those two sides. If need 2 be, then continue on with our investigation with the 3 witnesses that have been provided. 4 Q Is enforcement of the company's harassment policy 5 supposed to be a priority? 6 A Yes. 7 Q Is that the training that you provide to managers at 8 Smithfield Foods? 9 A Yes. So on the Train the Trainer ones, it's we need to 10 look into these right when we get them, yes. 11 Q And are front line managers authorized to issue 12 discipline in their departments when confronted with 13 situations involving harassment? 14 A Generally, those -- no. Those would then probably be 15 brought to HR for a final review and discussion. 16 Q So what do you mean by final review? 17 A To review it with them, make sure, you know, everything 18 was gone over. 19 Q And what do you train your managers -- if they receive 20 a report of racial discrimination, what are they 21 supposed to do under Smithfield policy? 22 A They should report that to HR. Probably talk to find 23 out what happened with that individual as well so that 24 way we know what is going on. 25 Q Are managers trained in any particular way about when</p>

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<p>1 to make -- when they are obligated to make a report to 2 HR about discrimination in the workplace? 3 A They should do it right away. 4 Q Is that part of the training? 5 A Yes, as part of the stuff that we've been coming out -- 6 yes. 7 Q Are they told that it's supposed to be a priority? 8 A That I do not -- I do not know. 9 Q If you could take a look at what's been marked as 10 Exhibit 3, which is sitting in front of you there. 11 A Okay. 12 Q Are you familiar with this handbook? 13 A Yes. 14 Q Is this a guide that is supposed to be read and 15 followed by all Smithfield Foods employees? 16 A Yes. 17 Q I see that your company motto and your shirt today says 18 the same thing. "Good Food. Responsibly." 19 What does the company motto mean? 20 A That we're responsible in the good food that we do 21 produce. 22 Q Does responsibility include the maintenance of a 23 professional work environment for your employees? 24 A Yes. 25 Q I'm looking at page 1 of your handbook. I assume</p>	<p>1 Q You're obligated to abide by your president's promise 2 that employees won't be retaliated against for making a 3 report or asking a question about Smithfield policy? 4 A Yes. 5 Q And is this something that is related -- do you, as an 6 HR manager, make sure that all Smithfield Foods 7 managers are aware that it is prohibited to retaliate 8 against employees who report a question or a concern? 9 A Yes. 10 Q And is that also related to employees, that there is a 11 promise from the company president that they will not 12 be subject to retaliation if they report? 13 A Yes. 14 Q And is that because it is so important for Smithfield 15 Foods, they want to create a culture where employees do 16 not worry that they will lose their job if they report 17 policy violations? 18 A Yes. 19 Q Is there any other purpose for having a Speak Up policy 20 that is mentioned on virtually every page of your code 21 of conduct? 22 MS. CALEM: Objection to the form of the question. 23 If you know, you can answer. 24 THE WITNESS: Can you repeat it, please. 25</p>

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1 that -- like, do you actually train your managers about
2 what's in your handbook?
3 A Yes.
4 Q Do you actually train your employees about what's in
5 this handbook?
6 A Yes.
7 Q Okay. I see in here on page 1 that your CEO mentions
8 the Speak Up program and says -- represents that on
9 virtually every page of this code of conduct the "speak
10 up" words are mentioned, and that, to me, would
11 indicate that you are supposed to be encouraging
12 employees to report any concerns or policy violation.
13 A Yes.
14 Q Is that what managers are trained, is that they should
15 encourage their employees to make prompt reports
16 whenever they have a question or concern about
17 Smithfield policy?
18 A Yes.
19 Q One of the statements in [Exhibit 3](#) on page 1 says that
20 the president and CEO of Smithfield says, "I promise
21 that you will not be retaliated against for raising a
22 question or reporting a concern."
23 Is that promise something that you understand as
24 an HR manager, first of all?
25 A Yes.

1 BY MS. POCHOP:
2 Q Sure. What is the purpose of telling employees --
3 making a promise and having Speak Up and examples of
4 times when you should speak up on virtually every page
5 of your employee code of conduct?
6 A Yes. It's so that we're aware and to bring their
7 concerns forward.
8 Q Is the code of conduct -- are the principles and
9 examples contained in the code meant to reflect the
10 laws and regulations as you understand that they apply
11 to Smithfield Foods?
12 A Yes.
13 Q Are employees required to sign a statement that said
14 that they've read the code of conduct and they'll act
15 in full compliance with the code?
16 A Yes. There is one that they acknowledge that they
17 received one.
18 Q Do you expect your managers not only to read the code
19 but actually live and example it?
20 A Yes.
21 Q Are employees instructed that if they have a question
22 about what it means to do the right thing in any
23 circumstances or if they think that any of their
24 co-employees are failing in their duty to live up to
25 the code, that they have a responsibility to speak up

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<p>1 as described in this handbook?</p> <p>2 A Yes.</p> <p>3 Q Is Smithfield committed to a working environment in 4 which employees feel comfortable and encouraged to 5 speak up and ask for help or raise concerns?</p> <p>6 A Yes.</p> <p>7 Q How would you assess that your HR department is 8 fulfilling your obligation to make sure that employees 9 feel comfortable and encouraged to ask for help and 10 raise concern?</p> <p>11 A We promote an open door policy.</p> <p>12 Q On page 3, there's a description -- and I know it's 13 your written policy, but I want to know if it's the 14 actual policy. Because there are times in HR when the 15 written policy isn't exactly how the company follows 16 it. And I'm not talking about Smithfield Foods, just 17 in general. Right?</p> <p>18 A Yes.</p> <p>19 Q That's a big HR red flag?</p> <p>20 A Okay.</p> <p>21 Q Is that true?</p> <p>22 A Yes. We want to make sure we're following the policy 23 that we have written.</p> <p>24 Q And is it important to make sure that company policies 25 are applied the same to all employees?</p>	<p>Page 21</p> <p>1 right?</p> <p>2 A Yes.</p> <p>3 Q Is that a way to try to encourage employees that they 4 should promptly report any violation that they see?</p> <p>5 A Yes.</p> <p>6 Q It tells employees here under the definition that it's 7 the responsibility of every employee to tell management 8 about any behavior that does not meet the standards 9 outlined in the code. Is that accurate?</p> <p>10 A Yes.</p> <p>11 Q So employees have a responsibility to report?</p> <p>12 A Yes.</p> <p>13 Q And over here on page 3, in this little box about -- 14 describing doing the right thing, again, it says 15 employees have a duty to speak up if they see anything 16 that they suspect is improper or unethical.</p> <p>17 Right?</p> <p>18 A Yes.</p> <p>19 Q And there's kind of a checklist that they're supposed 20 to go through to decide whether or not they have that 21 duty to report?</p> <p>22 A Yes.</p> <p>23 Q If employees are concerned about reporting 24 discriminatory/racial comments that they hear in the 25 workplace, is Smithfield management meeting its code of</p>
<p>Page 22</p> <p>1 A Yes.</p> <p>2 Q And what do you do at Smithfield in HR to assure that 3 company policies are being applied the same way to all 4 of your employees?</p> <p>5 A We have our handbook that is in place that has work 6 rule violations in there. If it's not a work rule 7 violation, there would then be an attendance policy 8 that we review. We want them to be looking at the 9 employee's record to see if they have anything. We 10 do -- HR will talk, if need be, to kind of see what one 11 has done before, if they had a situation like that, for 12 recommendation on how to move forward.</p> <p>13 Q So in HR you actually compare other employee 14 disciplines to make sure that the proposed discipline 15 for an individual is consistent?</p> <p>16 A We provide suggestions on, you know, maybe just 17 feedback from another HR professional, what they've 18 done.</p> <p>19 Q So do managers have the ability to override HR's 20 suggestions?</p> <p>21 A No. So they're done in HR? No.</p> <p>22 Q So on page 3, it defines the "speak up" term. It says, 23 Speak Up, with an exclamation point and in all caps and 24 underlined. And it's underlined, it's in bold, and 25 it's got an exclamation throughout the entire handbook,</p>	<p>Page 24</p> <p>1 conduct?</p> <p>2 A Yes, because we also have an ethics hotline and a tip 3 line too to give them another resource to reach out to.</p> <p>4 Q So, for example, if you assume that there have been 5 employees that have testified here that they haven't 6 come forward with policy violations that they've 7 witnessed or experienced because they're afraid, is 8 Smithfield management meeting its obligation to fulfill 9 their code of conduct?</p> <p>10 MS. CALEM: Object to the form.</p> <p>11 THE WITNESS: Yes, because we have an open door 12 policy and we're asking them to speak up and bring 13 those concerns forward.</p> <p>14 BY MS. POCHOP:</p> <p>15 Q So can you describe what your open door policy for 16 employees is?</p> <p>17 A We make ourselves available that, if they have a 18 question or a concern, they can come to the HR office 19 and meet with one of the HR representatives there.</p> <p>20 Q And do you promise employees that that's what they will 21 get if they follow their obligation to speak up, is 22 they'll have an opportunity to come on the open door 23 policy and speak to an HR representative?</p> <p>24 A Yes.</p> <p>25 Q Is that the obligation of HR managers, to make sure</p>

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<p style="text-align: right;">Page 25</p> <p>1 that they have an open door policy, as advertised to 2 employees, when employees come to report discriminatory 3 treatment?</p> <p>4 A Yes.</p> <p>5 Q If you have an HR manager who does not have an open 6 door policy for employees to come and report 7 discrimination or speak up, is that employee subject to 8 discipline?</p> <p>9 MS. CALEM: Object to the form.</p> <p>10 THE WITNESS: That I don't know. It depends. I 11 mean, it would go through their manager to review.</p> <p>12 BY MS. POCHOP:</p> <p>13 Q The central role of HR is to have an open door and 14 receive employee complaints, right?</p> <p>15 A Yes.</p> <p>16 Q And if that isn't happening, is that a policy violation 17 in and of itself by the HR manager?</p> <p>18 MS. CALEM: Object to the form.</p> <p>19 THE WITNESS: We have that open door policy to do 20 a prompt investigation/review of that concern.</p> <p>21 BY MS. POCHOP:</p> <p>22 Q Are you aware of any -- I guess there's just two of 23 you. Have either one -- have you ever been 24 disciplined?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q They are told that they should talk to their immediate 2 supervisor, the local human resources manager, or 3 others in management?</p> <p>4 A Yes.</p> <p>5 Q And any of those three avenues is what you tell your 6 employees they're supposed to do if they experience, 7 see, or have a question about discrimination in the 8 workplace?</p> <p>9 A Yes.</p> <p>10 Q And when we look at what constitutes harassment, is it 11 true that Smithfield employees have the right to work 12 free from harassment?</p> <p>13 A Yes.</p> <p>14 Q And Smithfield tells employees that that's any behavior 15 that demeans, intimidates, or offends an individual?</p> <p>16 A Yes.</p> <p>17 Q Are employees and managers told that they are to avoid 18 unwelcome physical or visual conduct related to race, 19 color, gender, sexual preference, age, physical or 20 mental disability, veteran status, and any other 21 legally protected characteristic?</p> <p>22 A Yes.</p> <p>23 Q Are Smithfield employees expected to avoid racial, 24 ethnic, religious, sexual slurs or jokes?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q Have you ever had your performance evaluated?</p> <p>2 A Yes.</p> <p>3 Q And how are your performance evaluations?</p> <p>4 A I'm always rated as doing well, good.</p> <p>5 Q Do you know how Carrie's performance evaluation is?</p> <p>6 A No.</p> <p>7 Q Is she your supervisor or are you guys at the same 8 level?</p> <p>9 A We're at the same level.</p> <p>10 Q Who does your performance evaluation?</p> <p>11 A Mr. Scott Reed.</p> <p>12 Q And is he the next step in your chain of command?</p> <p>13 A Yes.</p> <p>14 Q Where does David Hillberg fit into HR?</p> <p>15 A David Hillberg is an operation manager on our packaged 16 meat side of the plant.</p> <p>17 Q So if we go to page 6 of <u>Exhibit 3</u>, it's the diversity 18 and equal employment policy, first, is what I'm looking 19 at, and I've got that highlighted over there for you.</p> <p>20 Is Smithfield policy that if an employee feels 21 they have been discriminated against or believes 22 somebody else has been a victim of discrimination or if 23 they even have a question about antidiscrimination 24 policies, they are instructed to speak up?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q Is it a violation of Smithfield policy if an employee 2 makes a racial slur?</p> <p>3 A Yes.</p> <p>4 Q Is it a violation of Smithfield policy if an employee 5 makes a racial joke?</p> <p>6 A Yes.</p> <p>7 Q Is it a violation of Smithfield policy if an employee 8 says "I think you're being racist"?</p> <p>9 A That would depend on how it was used in a context.</p> <p>10 Q What would the context, where it would be a violation 11 of policy, be?</p> <p>12 A If you're being racist? Is that -- can you just repeat 13 that, please.</p> <p>14 Q Yeah. Is it a violation of the policy -- when would it 15 be a violation of policy for an employee to say "I 16 think you're being racist"? Can you think of any 17 context in which that would be a violation of 18 Smithfield policy?</p> <p>19 A No.</p> <p>20 Q Is it a violation of policy to use bullying, abusive 21 language, physical aggression, intimidating or violent 22 behaviors, or to make disparaging comments?</p> <p>23 A Yes, that is a violation.</p> <p>24 Q Is unnecessarily touching or intentionally even 25 blocking somebody from moving, is that a violation of</p>

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<p style="text-align: right;">Page 29</p> <p>1 Smithfield policy?</p> <p>2 A Yes.</p> <p>3 Q Sexual advances, are those -- those are obvious</p> <p>4 violations, right?</p> <p>5 A Yes.</p> <p>6 Q Other actions that unreasonably interrupt or interfere</p> <p>7 with an employee's work performance, how is that</p> <p>8 defined by HR at Smithfield?</p> <p>9 A So if something's -- it would be if something's coming</p> <p>10 in the way of somebody performing their job duties.</p> <p>11 Again, it could refer to some of the top ones, that</p> <p>12 they're just making them uncomfortable but they may not</p> <p>13 be able to perform their job duties as they should.</p> <p>14 Q If anybody comes to HR and makes a report about any of</p> <p>15 these types of behaviors, what is HR management's</p> <p>16 responsibility?</p> <p>17 A To investigate that promptly, timely.</p> <p>18 Q Are employees protected from retaliation if they speak</p> <p>19 up under your policy?</p> <p>20 A Yes.</p> <p>21 Q And can you tell me what your understanding of the</p> <p>22 Smithfield retaliation policy is?</p> <p>23 A We do not take any adverse action for someone taking</p> <p>24 part in a protected activity, such as making a claim or</p> <p>25 being part of an investigation.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q And, again, it tells employees, reiterates that if they</p> <p>2 are being harassed or see anybody else being harassed,</p> <p>3 they need to tell a supervisor, human resources, or</p> <p>4 take other action outlined in the handbook, right?</p> <p>5 A Yes.</p> <p>6 Q And they even give an example where they tell employees</p> <p>7 that if you've got a supervisor who's constantly</p> <p>8 yelling or even makes an offhand remark about</p> <p>9 threatening somebody that nobody even thinks is true,</p> <p>10 that that needs to be reported?</p> <p>11 A Yes.</p> <p>12 Q I'm just wondering, do you -- this is something that is</p> <p>13 reiterated to employees in their annual training?</p> <p>14 A Yes.</p> <p>15 Q And how is that training done? Is it, like, a video?</p> <p>16 Do you do a lecture?</p> <p>17 A So it's done -- Train the Trainer, at that time, we do</p> <p>18 have a PowerPoint presentation, and that would be how</p> <p>19 we do that.</p> <p>20 Q If you could look at Exhibit 2 that you have there in</p> <p>21 front of you. Are you familiar with Exhibit 2?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me what it is?</p> <p>24 A This is our employee handbook.</p> <p>25 Q Is HR actually responsible for writing that or --</p>
<p style="text-align: right;">Page 30</p> <p>1 Q And if a Smithfield manager retaliates against an</p> <p>2 employee who is bringing a racial discrimination claim,</p> <p>3 would that be a protected activity?</p> <p>4 A Yes.</p> <p>5 Q If the Smithfield employee retaliates and disciplines</p> <p>6 an employee for bringing a claim, is that a violation</p> <p>7 of Smithfield policy?</p> <p>8 A Can you elaborate on that just a little bit as far as</p> <p>9 discipline?</p> <p>10 Q Can managers punish people for bringing -- discipline</p> <p>11 people for bringing discrimination claims?</p> <p>12 A No.</p> <p>13 Q Is it a violation of the Smithfield policy by that</p> <p>14 manager that should subject that manager to discipline</p> <p>15 if a manager disciplines somebody for bringing a</p> <p>16 discrimination claim?</p> <p>17 A Yes.</p> <p>18 Q Are you aware of any instance where any Smithfield</p> <p>19 manager has been disciplined for retaliating against an</p> <p>20 employee?</p> <p>21 A I do not know the answer to that.</p> <p>22 Q And on page 7 of Exhibit 3, Smithfield clarifies that</p> <p>23 its policy applies to all employees and anyone else who</p> <p>24 does business with Smithfield, right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes. We hold the original copy and revise that as</p> <p>2 needed, yes.</p> <p>3 Q So on page 5, can you describe your ethics policy?</p> <p>4 A The ethics policy is to make sure that we're treating</p> <p>5 everybody fairly, responsibly, living up to a high</p> <p>6 ethical/legal standard. Again, it goes back to</p> <p>7 producing a high-quality product, animal care...</p> <p>8 Q On page 6, can you describe what you represent to</p> <p>9 employees about Smithfield's efforts to ensure that</p> <p>10 they can feel free to report policy violations?</p> <p>11 A Can you repeat that, please.</p> <p>12 Q Sure. On page 6, is there a policy -- can you tell me</p> <p>13 what your policy tells employees about retaliation?</p> <p>14 A In there -- retaliation is found in the harassment</p> <p>15 verbiage, and it says that there will be no retaliation</p> <p>16 for bringing forth a claim of harassment or taking part</p> <p>17 in an investigation.</p> <p>18 Q I'll ask a better question when I'm looking at it.</p> <p>19 At the top of page 6, it refers again to Speak Up,</p> <p>20 just in case people missed it from the other</p> <p>21 handbook --</p> <p>22 A Yes.</p> <p>23 Q -- I guess?</p> <p>24 A Yes.</p> <p>25 Q And it says, quote, we are doing everything we can to</p>

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<p style="text-align: right;">Page 33</p> <p>1 make speaking up easy to do, and it provided various 2 ways for anyone to raise a question or concern, right? 3 A Yes. 4 Q And it says, "You will not be retaliated against for 5 raising a question or reporting a concern." 6 A Yes. 7 Q Can you give me some examples that you know from your 8 training as an HR specialist about different ways that 9 an employer can retaliate? Is discipline -- giving a 10 discipline for making a report, is that one of them? 11 A That would be one, discipline. 12 Q That's a pretty big one in HR training because of the 13 chilling effect it can have on other employees to come 14 forward, right? 15 MS. CALEM: Objection to the form. 16 THE WITNESS: Yes. 17 BY MS. POCHOP: 18 Q How about work duties? Can you assign -- is assigning 19 employees to more difficult or unfavorable work 20 duties -- is that a red flag for HR folks about signs 21 of retaliation? 22 A It would -- visiting with the employee on their work 23 rule, what their work assignment is. 24 Q Is hours, having your hours changed, is that a way that 25 is a commonly known red flag for HR to look at if</p>	<p style="text-align: right;">Page 35</p> <p>1 A I don't believe I've had any that I can think of. 2 Q How about sexual harassment or sexual behavior in the 3 workplace complaints? How many investigations have you 4 conducted into complaints about the company's sexual 5 harassment policy? 6 A When a concern's brought forward, then we -- I looked 7 at it that time. There would be the one that I can 8 think of. Other than that, I can't really think of any 9 at this moment. 10 Q And, again, is that in Sala's case? 11 A It was brought up during Sala's case, but not in 12 regards to Sala, no. 13 Q Which complaint was that? 14 A Lisa was concerned that Tom Anderson, years prior, had 15 made some inappropriate gestures towards her. 16 Q And so did you conduct a sexual harassment 17 investigation? 18 A We did talk to Tom. BJ Manning [sic] and myself talked 19 to him, and he said -- so, yes, I reviewed it. 20 Q What was the outcome of your review? 21 A The time frame and -- you know, we reviewed it, and 22 that was, as far as -- you know, visited with Tom as 23 well. 24 Q Did you ever ask Lisa to make a written statement? 25 A No.</p>
<p style="text-align: right;">Page 34</p> <p>1 employees think that they're being retaliated against? 2 A Yes. 3 Q Do you have an obligation as an HR manager at 4 Smithfield to investigate claims of retaliation? 5 A Yes. 6 Q Are you supposed to use the same procedure, which is 7 investigate, get witness statements, and follow 8 through, to determine if the employee is being subject 9 to retaliation? 10 A Yes. 11 Q Have you ever done an investigation yourself about 12 retaliation? 13 A I -- yes. 14 Q When? 15 A I think the concern that was brought forward if having 16 to move jobs -- it was a grievance, so it wasn't -- so 17 that would be the one I've done. 18 Q In Sala's case? 19 A Yes. 20 Q Is that the only time you've ever investigated a claim 21 of retaliation at Smithfield Foods? 22 A Yes. 23 Q How about claims of discrimination? Have you -- how 24 many times have you investigated discrimination 25 complaints by employees at Smithfield Foods?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q Did you know that she felt that this harassment was an 2 intense experience on at least three occasions? 3 A No. 4 Q As the HR person who -- I mean, I just met her this 5 morning and she told me about it. As the HR person who 6 is supposed to be investigating this, why didn't you 7 know that she felt that she had three intense sexual 8 harassment experiences with Tom Anderson? 9 MS. CALEM: Object to the form of the question. 10 It's argumentative. 11 THE WITNESS: Because they weren't brought 12 forward. 13 BY MS. POCHOP: 14 Q But she did bring them forward to you, right? 15 A Yes. 16 Q And you didn't ask her to make a written statement 17 apparently? 18 A No. 19 Q You actually have a form for making complaints like 20 that at Smithfield Foods, right? 21 A Yes. 22 Q And that is your documentation policy, correct? 23 A Yes. 24 Q And you apparently didn't ask her for the details of 25 her sexual harassment experience?</p>

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<p>1 MS. CALEM: Objection.</p> <p>2 BY MS. POCHOP:</p> <p>3 Q Did you?</p> <p>4 A She verbally told us that she had an encounter with him</p> <p>5 years prior and that he had made some inappropriate</p> <p>6 gestures at that time.</p> <p>7 Q And so what were the gestures?</p> <p>8 A Swivelling of the hips, if that's -- that's what I</p> <p>9 recall.</p> <p>10 Q Do you know what three incidents she felt were very</p> <p>11 intense sexual harassment?</p> <p>12 A No.</p> <p>13 Q Is it a surprise to you today that I'm asking you what</p> <p>14 three experiences she would have been testifying about</p> <p>15 today?</p> <p>16 MS. CALEM: Objection to the form of the question.</p> <p>17 THE WITNESS: No -- can you repeat that? I'm --</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Is it a surprise to you that you don't know what three</p> <p>20 experiences she testified about today that she felt</p> <p>21 were three intense sexual harassment experiences in the</p> <p>22 Smithfield workplace?</p> <p>23 MS. CALEM: I'm going to object to the form of the</p> <p>24 question and also the tone of the questioning. There's</p> <p>25 an indignant tone that suggests that this witness did</p>	<p>1 she didn't come forward to report because she was</p> <p>2 afraid of getting into trouble?</p> <p>3 A No.</p> <p>4 Q Well, maybe you can take a look at -- let's see. I</p> <p>5 need those. Rather than extrapolate, let's take a look</p> <p>6 at Exhibit 30.</p> <p>7 On Exhibit 30 -- first of all, is that a document</p> <p>8 that you recognize?</p> <p>9 A Yes.</p> <p>10 Q Is this a document that you prepared?</p> <p>11 A Yes.</p> <p>12 Q Is it accurate?</p> <p>13 A Yes.</p> <p>14 Q Is it important that your documentation be as accurate</p> <p>15 and detailed as you can make it?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A For if it would come up at a later reference and I need</p> <p>19 to refer to it.</p> <p>20 Q If you look at page 2 of Exhibit 30, at the top, you're</p> <p>21 describing here Lisa reporting to you an incident that</p> <p>22 would be a violation of your sexual harassment policy,</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q Do you see what you wrote in your notes about why she</p>
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<p>1 something wrong.</p> <p>2 MS. POCHOP: I am indignant about it.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q But you can answer.</p> <p>5 MS. CALEM: It's an entirely inappropriate way to</p> <p>6 address this witness.</p> <p>7 THE WITNESS: So, no, I visited with her.</p> <p>8 BY MS. POCHOP:</p> <p>9 Q As the HR manager, is it your responsibility to find</p> <p>10 out the details of her policy complaint about sexual</p> <p>11 harassment?</p> <p>12 MS. CALEM: Objection. Form of the question.</p> <p>13 THE WITNESS: Yes. And I worked to get those</p> <p>14 details from her that she did provide.</p> <p>15 BY MS. POCHOP:</p> <p>16 Q When she told you that she had not reported because she</p> <p>17 was afraid of getting into trouble, what did you tell</p> <p>18 her?</p> <p>19 MS. CALEM: Objection. That completely misstates</p> <p>20 testimony, lacks foundation. There's been no such</p> <p>21 testimony that Lisa Christion told Monica that. You</p> <p>22 are extrapolating from Lisa's testimony and assuming</p> <p>23 that Monica knows that, and that's unfair to Monica.</p> <p>24 BY MS. POCHOP:</p> <p>25 Q Did you know that she didn't come forward -- she said</p>	<p>1 told you she hadn't reported it?</p> <p>2 A Yes.</p> <p>3 Q Can you tell me what you documented about why Lisa told</p> <p>4 you she had not reported this sexual harassment in the</p> <p>5 workplace?</p> <p>6 A Because she did not want to get him or her in trouble.</p> <p>7 Q Is that what she told you?</p> <p>8 A Yes, that's what I put down in my notes.</p> <p>9 Q And so my question is, what did you do when you found</p> <p>10 out that your lead person in this department had</p> <p>11 experienced sexual harassment and had worried about</p> <p>12 reporting it because she didn't want to get into</p> <p>13 trouble?</p> <p>14 A We did talk to Tom Anderson to see what had happened in</p> <p>15 regards to their initial thing. It was an issue that</p> <p>16 had happened prior.</p> <p>17 Q When?</p> <p>18 A I don't recall when she said, how far back it was. I</p> <p>19 don't have that in my notes.</p> <p>20 Q That would be kind of an important detail to know,</p> <p>21 right?</p> <p>22 MS. CALEM: Objection to the form.</p> <p>23 THE WITNESS: It would have been</p> <p>24 beneficial/helpful to have, yes.</p> <p>25</p>

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<p style="text-align: right;">Page 41</p> <p>1 BY MS. POCHOP: 2 Q So what was the outcome of the chat that you had with 3 Tom about Lisa's report of sexual harassment? 4 A He denies harassing her. 5 Q And so what did -- what was the outcome? After she 6 said, this happened to me, he said it didn't, then what 7 happened? 8 A I did not have that -- I don't have that in front of 9 me. 10 Q Well, what did you do? Because you were the person 11 investigating, right? 12 A Uh-huh. 13 Q And it's the only one you've ever done, right? 14 A Yes. 15 Q So what did you do? 16 A I don't have that in front of me. 17 Q I want to know what you can recall doing, if anything. 18 A From my notes, it shows I didn't do anything. I did 19 not provide a follow-up. 20 Q Is that consistent with Smithfield's code of conduct? 21 A No. 22 Q Did you violate Smithfield's policy by not following up 23 when you received a report -- when somebody had the 24 concern enough about it to speak up? 25 MS. CALEM: Objection to the form.</p>	<p style="text-align: right;">Page 43</p> <p>1 BY MS. POCHOP: 2 Q I'm sorry if my tone is snide. It's just my tone. 3 A Can you repeat the question, please. 4 MS. POCHOP: Can you read it back for us, Audrey? 5 (The record was read by the reporter as follows: 6 Question: "In fact, you represent to your 7 employees when you do these trainings that you're going 8 to follow the policy because they have to follow it?") 9 THE WITNESS: Yes. 10 BY MS. POCHOP: 11 Q Are there other instances where you have not followed 12 the complete Smithfield policy that you are aware of? 13 A No. 14 Q On page 15 of <u>Exhibit 2</u>, I wanted to ask you about 15 postings in the workplace. 16 Is there a policy that says that anything that's 17 going to be posted in the Smithfield workplace has to 18 be approved by management? 19 A They do come to HR for approval if they're going to go 20 on the company boards. 21 Q Did you know that there was an article about Sala and 22 Yvette's lawsuit posted on the Smithfield bulletin 23 board? 24 A No. 25 Q Would that have been something that somebody should</p>
<p style="text-align: right;">Page 42</p> <p>1 BY MS. POCHOP: 2 Q Ms. Derby, did you violate Smithfield policy by not 3 following up with this report? 4 MS. CALEM: Objection to the form. 5 THE WITNESS: I don't think I violated it. I may 6 not have followed the full procedure. 7 BY MS. POCHOP: 8 Q Is there some policy at Smithfield that says you don't 9 have to follow the full sexual harassment policy as an 10 HR manager? 11 MS. CALEM: Objection to the form. 12 THE WITNESS: No. 13 BY MS. POCHOP: 14 Q Are employees instructed or informed that you don't 15 have to follow the whole policy as an HR manager? 16 MS. CALEM: Objection to the form. 17 THE WITNESS: No. 18 BY MS. POCHOP: 19 Q In fact, you represent to your employees when you do 20 these trainings that you're going to follow the policy 21 because they have to follow it? 22 MS. CALEM: I'm going to object to the form and 23 again the tone. Please stop haranguing and speaking 24 snidely to this witness. 25</p>	<p style="text-align: right;">Page 44</p> <p>1 have gotten permission to do? 2 A Yes. 3 Q If that happened and the Argus Leader article about the 4 racial discrimination case filed by your employees was 5 posted in the Smithfield workplace, is that something 6 that should have been reported to HR if there wasn't 7 permission to post? 8 MS. CALEM: Objection to the form. 9 THE WITNESS: For somebody to speak up and say 10 that it was posted? 11 BY MS. POCHOP: 12 Q Yeah. Well, you wouldn't really even have to see it 13 and somebody'd walk by and look at it, right? 14 A Yes. 15 Q Did you know that it was posted? 16 MS. CALEM: Objection. Asked and answered. 17 THE WITNESS: No. 18 BY MS. POCHOP: 19 Q Are you aware of anybody giving permission to have that 20 newspaper article posted on the bulletin board? 21 MS. CALEM: Objection. 22 THE WITNESS: That I do not know. 23 BY MS. POCHOP: 24 Q Would there be any legitimate reason to have it -- to 25 have HR approval to post a newspaper article about the</p>

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<p style="text-align: right;">Page 45</p> <p>1 company being sued for race discrimination and 2 retaliation? 3 MS. CALEM: Objection to the form. 4 THE WITNESS: Just to make sure there's something 5 appropriate on the board. 6 BY MS. POCHOP: 7 Q You think that would have been an appropriate thing to 8 have there? 9 MS. CALEM: Objection to the form. 10 THE WITNESS: It would have to be reviewed and 11 determined. 12 BY MS. POCHOP: 13 Q Who would do that? Who would make that determination? 14 A Scott Reed. 15 Q Is that something that he would have the sole 16 discretion to decide? 17 MS. CALEM: Objection to the form. 18 THE WITNESS: Or -- yes, or the plant manager. 19 BY MS. POCHOP: 20 Q Does he have to come talk to you about it? 21 MS. CALEM: Objection to the form. 22 THE WITNESS: No. Mr. Reed's the director of the 23 department. 24 (Exhibit 47 is marked for identification.) 25</p>	<p style="text-align: right;">Page 47</p> <p>1 the HR professionals in the office. 2 Q I want to ask you about these specific comments. 3 Calling people of color monkeys, is that an obvious 4 violation of Smithfield policy? 5 A Yes. 6 Q Should that be something that any supervisor would 7 recognize as an obvious violation of policy? 8 A Yes. 9 Q Swearing at coworkers to hurry the fuck up? 10 A Yes. That would be inconsiderate treatment of 11 coworkers. 12 Q Pushing products faster than the coworkers say that 13 they can handle. If your coworkers say, "slow down, I 14 can't keep up," is it a violation of any policy or 15 safety policy at Smithfield to continue pushing the 16 products to them? 17 A Not if it's going to hurt somebody. 18 Q Like, for example, if you get hit by -- if you get hit 19 by a ham or a ham falls on your foot, is that an 20 obvious problem under a Smithfield policy? 21 A Yes. For safety, make sure we review that. 22 Q Physically intimidating coworkers so that you can see 23 that they are scared, is that a violation of Smithfield 24 policy? 25 A Yes.</p>
<p style="text-align: right;">Page 46</p> <p>1 BY MS. POCHOP: 2 Q I'm showing you a photograph of the newspaper article 3 that was posted at work on the company bulletin board. 4 Do you recognize where this would have been 5 posted? 6 A No. 7 Q Is this the first time you've seen that? 8 A I had seen the article, but this is the first I've seen 9 of this exhibit, yes. 10 Q From an HR perspective, is there a reason why you think 11 that that would be a legitimate thing to have posted in 12 the workplace, that article? 13 MS. CALEM: Object to the form. 14 THE WITNESS: It would be if it was -- depending 15 on if the names that were in here, if they didn't want 16 their information on the company bulletin board. 17 BY MS. POCHOP: 18 Q Have you been involved -- were you involved in any way 19 in the Scott Genzler racism incident with Sala, Yvette 20 and Lorena Morales? 21 A No. 22 Q Did you know about it? 23 A After the investigation. 24 Q How did you hear about it? 25 A I think just in discussion and -- in discussion between</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Is telling coworkers to go back to their country when 2 they are people of color, is that an obvious violation 3 of Smithfield policy? 4 A Yes. 5 Q Telling people that they need to speak English in the 6 plant, is that a violation of Smithfield policy? 7 A Yeah, because they don't need to speak their 8 language -- or only English in the plant. 9 Q What is rule No. 15? 10 A Rule No. 15 is the use of profane or abusive language, 11 combative behavior, or failure to cooperate. 12 Q When was your first involvement with Sala and Yvette 13 from an HR perspective? 14 A My first -- working with Yvette, I believe Carrie -- I 15 sat in on an interview with her one time. She was -- 16 for Juan. Sat in with Yvette on that one. That would 17 have been my first encounter with Yvette. 18 I worked with Sala when she had brought forward -- 19 or we asked her to come down in regards to a grievance 20 that was brought forward, just to kind of find out her 21 concern, so I did an intake note with that. 22 Q What was the result of your intake note? What did you 23 do after you sat in with Sala's intake? 24 A With Sala's intake, BJ and I worked through that one. 25 We investigated the situation. When we were finished,</p>

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<p>1 we had agreed, decided that Sala would then pick her 2 jobs, what she would do, starting on Monday. It was a 3 recommendation from BJ to have Sala pick the jobs that 4 she would like based on her -- the work group would do. 5 Q Was that something that HR approved of? 6 A Yes. 7 Q Is that a reasonable accommodation to an employee who 8 is feeling retaliated against? 9 MS. CALEM: Objection to the form of the question. 10 Incomplete hypothetical, calls for speculation. 11 THE WITNESS: So the concern that was brought 12 forward was having to work on Arby's, so that's what 13 the grievance was for, and so that's kind of -- 14 reviewed that, if they have assigned other people to 15 that job before, and so in order for that, it was 16 agreed that on Monday she would pick her job for the 17 week. 18 BY MS. POCHOP: 19 Q Did Sala make complaints to you about her supervisor 20 Gary? 21 A Yes. She laid a background on -- she had said that she 22 worked a lot with Carrie and Carrie knew her 23 background. 24 Q Did she make reports about Gary's workplace behavior 25 toward her?</p>	<p>1 Q And what was Gary's general response? 2 A That he didn't swear at her and that he had come out of 3 the office when they were doing the assignments. 4 Q And what was the outcome of your investigation? 5 A The outcome of the investigation is we talked to 6 everyone based on how they -- they had seven people out 7 that day. I think there was one person that had lesser 8 hours than Sala by .3 hours, and so we kind of looked 9 at the seniority. She was put on Arby's to kind of 10 fill the rest of her hours. And, again, in agreement 11 with the union that what we would do is, on Monday, she 12 would pick her jobs for the week based on seniority and 13 working around other people's assigned jobs. 14 Q Were you involved when there was an incident when Sala 15 said that somebody had thrown meat on her? 16 A Yes. 17 Q Is throwing meat at each other permitted under 18 Smithfield policies? 19 A No. 20 Q What was the outcome of your investigation with regard 21 to the allegation that somebody threw meat at her? 22 A So working with the operations manager, they did talk 23 to everybody in the department and nobody had come 24 forward, so it was inconclusive on somebody throwing 25 meat.</p>
<p>1 A Yes, that he would yell. 2 Q And under your Speak Up example, that's something that 3 she's supposed to report to HR, right? 4 A Yes. 5 Q And what else -- did she make any other complaints to 6 you about Gary? 7 A That he had swore. He had swore when they were filling 8 water buckets. 9 Q Did you conduct an investigation into Sala's complaints 10 about Gary Loger? 11 A Yes. We had talked to Tom Zuraff, which would be the 12 union steward in that area, and we talked to Lisa as 13 well. 14 Q So did you document -- did you document any of these 15 interviews? 16 A Yes. 17 Q Did you ask Sala to complete a incident intake report? 18 A Yes. Sala was able to complete the top portion, and 19 then I made the notes from there. 20 Q And why is that? 21 A Because she said she wouldn't be able to complete the 22 form. She had requested if she could take it home with 23 her, and I said I would help her and get her statement. 24 Q So then did you follow up and investigate with Gary? 25 A Yes. So we talked to Gary as well.</p>	<p>1 Q So what was the HR resolution? 2 A So a month later a training was provided on, you know, 3 treating coworkers respectfully and respectful 4 communications in the department as well, so -- which 5 had taken place. 6 Q Did you do the training? 7 A No. Mr. Reed did that. 8 Q Were managers told to leave -- to instruct employees to 9 leave Sala alone and not bother her. 10 A Yes, because nobody should be throwing meat or 11 bothering people at all. 12 Q Did you know that Russ was going to have a meeting and 13 tell everyone to leave Sala alone and not to bother 14 her? Would that have been cleared with you as an HR 15 person before the meeting? 16 A No. I believe that had happened prior to finding out. 17 Q What does it tell you that the manager then has to call 18 everybody together in the workplace and say leave her 19 alone? 20 MS. CALEM: Objection to the form. 21 Do you understand the question? 22 THE WITNESS: No. If you could please repeat 23 that. 24 BY MS. POCHOP: 25 Q Yeah. What's your understanding of why Russ had to</p>

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<p>1 tell everybody to leave Sala alone and not bother her?</p> <p>2 MS. CALEM: Objection to the form. Calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: You know, if -- that I don't know.</p> <p>5 BY MS. POCHOP:</p> <p>6 Q Did that raise a concern for you when you were</p> <p>7 documenting that Russ did that, that Sala might be</p> <p>8 subject to retaliation in her workplace?</p> <p>9 MS. CALEM: Objection to the form.</p> <p>10 THE WITNESS: It was also, my understanding, a</p> <p>11 discovery to see if anybody had been -- had threw meat.</p> <p>12 BY MS. POCHOP:</p> <p>13 Q Okay. I'm going to ask you to take a look at what's</p> <p>14 been marked as <u>Exhibit 29</u> here. It's the grievance.</p> <p>15 This is the grievance about the work assignments,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q Did you see that grievance when you were investigating</p> <p>19 Sala's complaint?</p> <p>20 A I do not recall.</p> <p>21 Q <u>Did you know that she was complaining of being bullied</u></p> <p>22 <u>and harassed in the workplace?</u></p> <p>23 A <u>She just -- yes, that she felt like she wasn't being</u></p> <p>24 <u>treated fairly. She wanted to be treated like everyone</u></p> <p>25 <u>else is what she was expressing.</u></p>	<p>1 repeated harassment, wasn't she?</p> <p>2 MS. CALEM: Object to the form.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q That's what her grievance states, right?</p> <p>5 A That she's been in jobs or situations where they know</p> <p>6 there's not reasonable placement.</p> <p>7 So they put her in jobs that she felt that weren't</p> <p>8 reasonable, asking for help --</p> <p>9 BY MS. POCHOP:</p> <p>10 Q So in the -- and I'm guessing because the resolution</p> <p>11 was that she got to pick her jobs, was that a</p> <p>12 successful -- her grievance was reasonable then, right?</p> <p>13 MS. CALEM: Objection to the form of the question.</p> <p>14 BY MS. POCHOP:</p> <p>15 Q I mean, she wouldn't have been allowed to have that</p> <p>16 accommodation if it wasn't a reasonable grievance,</p> <p>17 correct?</p> <p>18 MS. CALEM: Objection to the form.</p> <p>19 THE WITNESS: The response to allow her to pick</p> <p>20 jobs on Monday allowed, you know, the placement, the</p> <p>21 choice, being an open work employee.</p> <p>22 BY MS. POCHOP:</p> <p>23 Q Were you involved in any of the employee warnings that</p> <p>24 Sala received after she reported Scott Genzler for</p> <p>25 racial discrimination in 2016?</p>
<p style="text-align: center;">Page 54</p> <p>1 Q <u>Did you investigate what she believed was why she felt</u></p> <p>2 <u>like she was being bullied and harassed on a daily</u></p> <p>3 <u>basis?</u></p> <p>4 MS. CALEM: Objection to the form of the question.</p> <p>5 THE WITNESS: Looked at the situation on what had</p> <p>6 taken place and what her concern was for her</p> <p>7 assignment.</p> <p>8 BY MS. POCHOP:</p> <p>9 Q <u>What was the harassment that she felt she was</u></p> <p>10 <u>experiencing on a daily basis?</u></p> <p>11 A Expressed not being treated the same as everyone else.</p> <p>12 Q In what way?</p> <p>13 A Felt that she was being yelled at by her supervisor --</p> <p>14 or just being yelled at compared to other people.</p> <p>15 Assigned to do Arby's that day by herself, was</p> <p>16 concerned about that.</p> <p>17 Q What was the other -- any other harassment that she</p> <p>18 expressed that she was experiencing on a daily basis?</p> <p>19 A Just that she felt she was being treated differently by</p> <p>20 Lisa and Gary compared to the other coworkers.</p> <p>21 Q <u>And in what way did she feel that she was being treated</u></p> <p>22 <u>differently?</u></p> <p>23 A Job assignments, the job assignments, have to do Arby's</p> <p>24 that time by herself.</p> <p>25 Q Well, that's the one incident, but she was grieving</p>	<p style="text-align: center;">Page 56</p> <p>1 A No.</p> <p>2 Q Did you ever review her performance record?</p> <p>3 A No.</p> <p>4 Q Did you ever investigate Russ for making Sala feel</p> <p>5 stressed and threatened at work?</p> <p>6 MS. CALEM: Objection to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. POCHOP:</p> <p>9 Q I'm looking at a grievance dated in August 2017 where</p> <p>10 the grievance was that grievant feels threatened and</p> <p>11 stressed by manager Russ coming up behind and poking</p> <p>12 grievant saying "what are you going to do now that your</p> <p>13 partner is gone," referring to a steward.</p> <p>14 Did you have anything to do with that</p> <p>15 investigation?</p> <p>16 A No.</p> <p>17 Q Do you know whether Russ was disciplined for how he was</p> <p>18 managing Sala?</p> <p>19 MS. CALEM: Objection to the form.</p> <p>20 THE WITNESS: Managing Sala or in regards to a</p> <p>21 specific incident?</p> <p>22 BY MS. POCHOP:</p> <p>23 Q Either way.</p> <p>24 A Yes.</p> <p>25 Q Okay. And what was that for?</p>

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<p>1 A I know he received a suspension. For specifics, I 2 don't have those.</p> <p>3 Q Just in general, why did he receive a suspension?</p> <p>4 MS. CALEM: Object to the form. It calls for 5 speculation. She said she was not involved in it.</p> <p>6 BY MS. POCHOP:</p> <p>7 Q I want to know your understanding of why he received a 8 suspension.</p> <p>9 A My understanding on why Russ received a suspension was 10 for the comment that he had made to Sala.</p> <p>11 Q Was it deemed to be threatening and intimidating?</p> <p>12 MS. CALEM: Objection to the form.</p> <p>13 THE WITNESS: I do not know his intent.</p> <p>14 BY MS. POCHOP:</p> <p>15 Q Were you involved in an investigation when Sala 16 reported that she had been physically hit by a ham 17 thrown by a coworker?</p> <p>18 A No.</p> <p>19 Q Have you had any other involvement in disciplinary 20 actions or reports of policy violations by Sala?</p> <p>21 A Yes.</p> <p>22 Q Can you tell me what they have been?</p> <p>23 A Initial intake, Sala had come in, Becky had flipped her 24 off and said an inappropriate word. Carrie and I 25 visited with Sala that day, and then we took the</p>	<p>1 said you were involved in a complaint with Yvette and 2 Juan. What was the complaint that you dealt with with 3 Yvette and Juan?</p> <p>4 A I just sat in when they took Yvette's statement that 5 day.</p> <p>6 Q Was that about Juan asking her to touch his penis at 7 work?</p> <p>8 A Yes.</p> <p>9 Q And what was the outcome of that investigation, if you 10 know?</p> <p>11 A That investigation, I believe they both expressed 12 complaints on how they were being treated, the outcome.</p> <p>13 Q I want to ask if you could look at what's been marked 14 as Exhibit 44. This is on -- 44 is on intake -- on the 15 intake form that employees are supposed to fill out if 16 they're going to report a violation of policy, right?</p> <p>17 A Yes.</p> <p>18 Q And this one says racist and -- it's misspelled, but it 19 says bullying?</p> <p>20 A Yes.</p> <p>21 Q I'm also going to show you a copy of what has been 22 marked as Exhibit 15.</p> <p>23 A Okay.</p> <p>24 Q That's just my copy of it, but -- that's another form 25 that was filled out, and that's a form provided in HR?</p>

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1 intake. And then Carrie followed up with Becky and 2 everything on that one. 3 Q And what was the outcome of that investigation? 4 A Becky had received a written warning. 5 Q Were you involved in investigating a complaint about 6 Amanda Avila and Sala? 7 A Can you just give me a little bit of background, 8 please. 9 Q Sure. Was there a complaint in January of 2018 between 10 Sala and Amanda Avila that resulted in a grievance 11 about Sala taking a picture of Amanda in the plant? 12 A Yes. Amanda came to me initially and expressed concern 13 that Sala had taken a picture of her in the plant, so 14 she was concerned about that. 15 Q Are employees allowed to take photos in the plant? 16 A No. They should not be having their cell phones in the 17 plant. 18 Q Do employees take cell phones and take pictures in the 19 plant? 20 A They're not supposed to take their cell phones out to 21 the plant. 22 Q But is that one of those policies, while it's in 23 writing, that employees don't really follow? 24 A Yes. 25 Q Were you involved in any way with any complaints -- you	1 A Yes. 2 Q Do you have to go to HR to get that form? 3 A Yes, this is -- yes, we have those in HR. 4 Q And so when you, as an HR manager, look at this intake 5 form, does that indicate to you a serious policy 6 violation by just the general description provided 7 about the incident? 8 MS. CALEM: Objection to the form. It calls for 9 speculation, assumes the truth of what is in the form. 10 THE WITNESS: It would raise concern that this 11 would need to be reviewed. 12 BY MS. POCHOP: 13 Q I mean, there isn't really any way to look at the 14 nature of the incident being reported and think, as an 15 HR manager, I don't need to investigate that, right? 16 A Can you say that again? 17 Q Yeah. I mean, as an HR manager, when somebody comes in 18 and fills out your HR form and you see that they're 19 alleging racist, bullying, and harassment, that 20 requires an investigation, right? 21 A Yes. 22 MS. POCHOP: Thank you, Monica. I don't have any 23 further questions. 24 MS. CALEM: I have a couple of follow-ups, Monica. 25